

**AGENDA ITEM 9: California WaterFix Activities**

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**Requested Action: Receive update on California WaterFix Project Activities**

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The California WaterFix project encompasses isolated conveyance twin tunnels with 9,000 cubic feet per second (cfs) capacity and habitat mitigation for tunnels construction and operation, as permitted under consultation with State and federal wildlife agencies and their respective endangered species acts. This staff report provides an update on financing, construction, and permitting for the project. Thanks to Melinda Terry of the North Delta Water Agency for her assistance with research on WaterFix project activities.

**FINANCING**

**Votes of Support:** Construction of a new Delta conveyance facility cannot start until entities with State Water Project (SWP) and Central Valley Project (CVP) water supply contracts have entered into contracts to pay for:

- Costs for environmental review, planning, design, construction, and mitigation required for construction, operation, and maintenance of the new facility; and
- Reimbursement of property taxes and assessments to local agencies for land used in the construction, location, mitigation, or operation of the new Delta facilities (Water Code §85089).

Several water districts, including Metropolitan Water District of Southern California and Kern County Water Agency, voted to support funding WaterFix, but have not yet voted to authorize a binding financial agreement committing their districts to pay a specific percentage of project costs. Two other major water districts have voted against funding for the current project. The vote by the Westlands Water District was based on concerns over the project's proposed financing structure. Santa Clara Valley Water District approved a set of guiding principles that supported a single tunnel project instead.

**Bond Sale:** In July 2017, the California Department of Water Resources (DWR) filed a lawsuit, called a "bond validation action", authorizing DWR to sell revenue bonds necessary to finance WaterFix design and construction. Several lawsuits have subsequently been filed to prevent DWR from selling the bonds.

**U.S. Interior Department Inspector General Report:** The August 2017 report found that the U.S. Bureau of Reclamation (USBR) provided a \$50 million federal subsidy to CVP contractors for their portion of Bay Delta Conservation Plan/WaterFix planning costs and failed to properly disclose to Congress and the public about USBR spending on the project.

**California State Auditor Report:** The October 2017 report on WaterFix, requested by the Joint Legislative Audit Committee, found that:

- The planning phase has experienced significant cost increases and schedule delays because of the unexpected complexity of the project.
- DWR did not appropriately select the current program manager for the conservation and conveyance program. Specifically, the agency did not follow state law and did not accurately value its initial contract and ensure that subcontractors had fair and reasonable pricing.
- DWR needs to take certain steps to better prepare for the transition of WaterFix to the design and construction phase, including completing an economic and financial analysis, fully implementing a governance structure, and maintaining important program management documents.

## **CONSTRUCTION**

**Video Animations:** In September 2017, DWR released four videos (<https://www.youtube.com/playlist?list=PLX71A87Ld9qgR2JrX0ERU2YfcGrBwqDTM>) with animation showing construction methods and activities associated with building twin tunnels, intakes, barge loading docks, and tunnel shafts.

## PERMITTING

Agency	Document/Permit	Status
California Department of Water Resources (DWR)	Environmental Impact Report (EIR)	DWR certified the Final EIR and adopted Findings and Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program on July 21, 2017. Coalitions, individual agencies, and environmental groups subsequently filed approximately 18 California Environmental Quality Act (CEQA) lawsuits.
US Bureau of Reclamation (USBR)	Environmental Impact Statement (EIS)	On December 22, 2016, USBR released the Final EIS for public comment, but has not yet issued a Record of Decision officially approving the EIS.
State Water Resources Control Board (SWRCB)	Change of Diversion Petition (Water Code §1701) – <i>Applicants, permittees, or licensees may only change the point of diversion with SWRCB permission. Proposed change of diversion cannot initiate a new water right or injure any other legal user of water.</i>	DWR and USBR jointly submitted a petition to SWRCB for change of diversion to the Central Valley Project (CVP)/State Water Project (SWP) water rights permits necessary to install three new SWP intakes on the Sacramento River. SWRCB split the quasi-judicial water rights hearings into two parts: Part 1 focusing on impacts to other legal users and flood protection; and Part 2 focused on impacts to fish and wildlife and recreation. Part 1 started in April 2016 and concluded in August 2017. Despite a request to indefinitely delay Part 2 until the USBR issues a Record of Decision, the SWRCB announced that Part 2 will start on January 18, 2018. At the conclusion of Part 2, the SWRCB will develop the terms and conditions for the SWP/CVP water rights permits.
National Marine Fisheries Service (NMFS); US Fish and Wildlife Service (USFWS)	Biological Opinions (US Endangered Species Act §7) – <i>Determination about whether Federal action is likely to jeopardize the continued existence of species or result in the destruction or adverse modification of critical habitat.</i>	On June 26, 2017, NMFS and USFWS issued biological opinions (BiOps) for the WaterFix project. USFWS clarified that their opinion is limited to certain components, including the tunnels and Clifton Court Forebay expansion; the three new diversion intakes will require additional consultation. Non-governmental organizations and fishing groups have filed lawsuits concerning both BiOps.

Agency	Document/Permit	Status
California Department of Fish and Wildlife (CDFW)	Incidental Take Permit (Fish and Game Code §2081) – <i>Permit required for take of California Endangered Species Act-listed species if such taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity.</i>	CDFW issued an Incidental Take Permit for the construction and operation of WaterFix on July 28, 2017. The 25-year permit expires on December 31, 2042. A coalition of NGOs has filed a lawsuit challenging the permit.
US Army Corps of Engineers (USACE)	Section 404 Permit (Clean Water Act Section 404) – <i>Permit required for projects involving discharge of dredged or fill material into Waters of the United States that will have potentially significant impacts.</i>	This permit has not yet been issued.
US Army Corps of Engineers (USACE)	Section 408 Permit (Clean Water Act Section 408) – <i>Permit required for permanent or temporary alteration or use of USACE facilities (such as Sacramento and San Joaquin Flood Control Projects)</i>	DWR will prepare and submit a permit application to USACE prior to work commencing on a jurisdictional levee.